

Fair Political Practices Commission
MEMORANDUM

To: Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh and Remy

From: Lawrence T. Woodlock, Senior Commission Counsel
Scott Hallabrin, General Counsel

Subject: Adoption of Regulation 18530.31

Date: November 1, 2007

Proposed Commission Action: Adopt Regulation 18530.31 as proposed by staff.

Reason for Adoption: The Commission recently considered an interpretation of Section 85303 and Regulation 18215(c)(16) categorically exempting sponsors' payments of committee fundraising costs from contribution limits set by Section 85303. The Commission declined to reverse staff advice on the application of Regulation 18215(c)(16) to fundraising costs, and approved an advice letter on the subject (the *Bell* Advice Letter, No. I-06-071a). The Commission recognized that Regulation 18215(c)(16), adopted in the wake of Proposition 208, may have outlived its usefulness and that, in any event, a regulation interpreting Section 85303 should be developed.

Section 85303(a) and (b) limit contributions made to or used by committees "for the purpose of making contributions to candidates for elective state office." Subdivision (c) adds a proviso:

"Except as provided in Section 85310, nothing in this chapter shall limit a person's contributions to a committee or political party committee *provided the contributions are used for purposes other than making contributions to candidates for elective state office.*" (Emphasis added.)

As discussed at the September meeting, the critical challenge presented by this statute is the identification of contributions that are made or used "for the purpose of making contributions to candidates for elective state office." The "legislative history" of Proposition 34 – materials provided to voters in the Ballot Pamphlet – lacks precise guidance in identifying contributions described by this statute. A Supplementary Memorandum offers the Commission and the regulated community a more detailed look at the considerations that led staff to conclude that contributions subject to the limits of this statute include contributions to fundraising events whose proceeds are used to make contributions to candidates for elective state office.

The draft regulation is organized in the following manner. Subdivision (a) defines terms needed to establish the scope of the regulation. Subdivision (b) states the circumstances under which a donor *makes* a contribution "for the purpose of making contributions to candidates for elective state office." Subdivision (c) then defines contributions that are *used* by the committee "for the purpose of making contributions to candidates for elective state office." Subdivision (d) provides that a donor will not be charged with a violation if the committee does not use the

contribution in violation of Section 85303, and offers illustrative examples of contributions that are *not* used for purposes subject to the statutory limits.

Subdivision (e) is a new provision that replaces allocation rules criticized as unwieldy by the regulated community in September. This new rule simply states that a committee must pay the costs of fundraising from proceeds deposited into the committee's all-purpose bank account. Those costs may be calculated as a fixed percentage¹ of the amount deposited, or the actual cost of fundraising as demonstrated by a reasonable accounting method supported by the committee's records. This rule eliminates complex "allocation" of costs for a multi-purpose fundraiser, and defers the payment of these costs from the all-purpose bank account until the point at which fundraising contributions are "used" for the purpose of making contributions to candidates for elective state office, as defined at subdivision (c)(1) of the regulation.

Subdivision (f) – which was subdivision (g) in the September version – exempts committees from paying out of an all-purpose account certain costs that could be attributed to fundraising activities. The prenotice version included an exemption for "costs attributable to compensation paid to staff permanently employed by the committee for services related to committee fundraising activities." Staff proposed this exception in anticipation of objections from the regulated community to the effect that the calculation of staff compensation would be difficult for some committees. As it happened, the regulated community did not make this objection, and in fact argued the inclusion of this exception suggested the regulation was not a rational interpretation of the statute. Accordingly the exception has been deleted from the regulation. Substantial costs in unrecorded staff time does not need to be calculated if a committee pays as fundraising costs the percentage of deposits stated in subdivision (e).

In a nutshell, contributions governed by Section 85303 are (1) contributions intended by the donor to be used to make contributions to candidates for elective state office, and/or (2) those actually used by the recipient for the same purpose, or made available for this use, by deposit into the committee's "all purpose" bank account which, under Regulation 18534, is the only account from which a committee may lawfully make contributions to candidates for elective state office.

Staff believes the regulation presented to the Commission for adoption fully and fairly interprets this statute, and the comments of the regulated community demonstrate a real need for a regulation that explains the application of Government Code Section 85303.

Recommendation: Adopt the attached regulation, for the reasons stated above and further elaborated the attached Supplementary Memorandum.

¹ The 33 percent rule is a rule of thumb adapted from the federal "one-third rule" at 11 C.F.R. Section 114.5(b)(2), which is considered to be a "reasonable practice" for measuring certain committee fundraising costs.